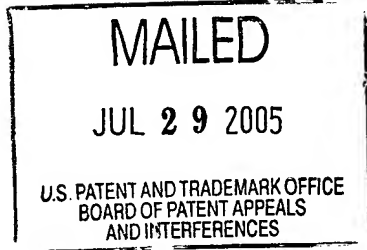


The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE



---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

Ex parte KLAUS SCHUMACHER

---

Appeal No. 2005-1904  
Application No. 10/041,075

---

ON BRIEF

---

Before KIMLIN, GARRIS and WARREN, Administrative Patent Judges.  
KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-3 and 5. Claims 6-11 stand withdrawn from consideration. Claim 1 is illustrative:

1. A dual bottle closure comprising:

a ceramic bottle having an opening and a neck with external screw threads formed thereon;

an external closure in the form of an external ceramic cap for covering said opening of said bottle, said external cap having internal screw threads which mate with said screw threads of said neck; and

Appeal No. 2005-1904  
Application No. 10/041,075

an internal closure in the form of an imperforate crown cap secured to said bottle;

wherein said external cap substantially encloses said crown cap when said external cap is threaded onto said neck of said bottle.

The examiner relies upon the following references as evidence of obviousness:

Podel	2,131,969	Oct. 4, 1938
Staples	2,390,561	Dec. 11, 1945

Appellant's claimed invention is directed to a dual closure for a ceramic bottle comprising an external ceramic cap and an imperforate crown cap that is secured to the bottle. The ceramic cap encloses the crown cap when it is threaded onto the neck of the bottle.

Appealed claims 1-3 and 5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Podel in view of Staples.

Appellant submits at page 3 of the brief that "[t]he claims stand or fall together." Accordingly, all the appealed claims stand or fall together with claim 1.

We have thoroughly reviewed each of appellant's arguments for patentability. However, we are in complete agreement with the examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Since we fully concur

with the examiner's reasoned analysis and application of the prior art, as well as his cogent disposition of the arguments raised by appellant, we will adopt the examiner's reasoning as our own in sustaining the rejection of record. We add the following for emphasis only.

Appellant does not dispute the examiner's factual determination that Podel discloses a glass bottle having an imperforate crown cap secured to the opening of the bottle, and an external metallic cap that screws onto the bottle over the crown cap. As recognized by the examiner, the external cap of Podel is metallic, rather than ceramic, as presently claimed. However, the examiner properly points out that Staples describes the advantages of employing a glass cap in lieu of a metal cap. In relevant part, Staples teaches that glass provides an advantage over metal in terms of cost, i.e., saving valuable metal, while further obviating corrosion. Accordingly, based on the collective teachings of Podel and Staples, we agree with the examiner that it would have been obvious for one of ordinary skill in the art to replace the external metal cap of Podel with an external ceramic cap for the advantages described in Staples.

The principal argument advanced by appellant is that the combination of Podel and Staples does not result in a bottle and

external cap made from ceramic. It is appellant's contention that the bottle and cap of Staples is made of glass, not the claimed ceramic. However, the examiner has submitted dictionary definitions which establish that one of ordinary skill in the art would consider glass a ceramic. For example, The Condensed Chemical Dictionary (8th ed., Litton Educational Publishings, Inc. 1971) states "[t]he chief major groups of the ceramics industry are as follows . . . (3) Glass products of all types." Significantly, appellant has not refuted the definitions provided by the examiner and we note, in particular, that appellant has not submitted a Reply Brief in response to the analysis set forth in the Examiner's Answer which demonstrates that glass is a ceramic. Consequently, the examiner's position stands unrebutted.

As a final point, we note that appellant bases no argument upon objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the inference of obviousness established by the examiner.

Appeal No. 2005-1904  
Application No. 10/041,075


In conclusion, based on the foregoing and the reasons well-stated by the examiner, the examiner's decision rejecting the appealed claims is affirmed.

AFFIRMED

Edward C. Kimlin  
EDWARD C. KIMLIN  
Administrative Patent Judge

  
BRADLEY R. GARRIS  
Administrative Patent Judge

BOARD OF PATENT  
APPEALS AND  
INTERFERENCES

  
CHARLES F. WARREN  
Administrative Patent Judge

ECK:clm

Appeal No. 2005-1904  
Application No. 10/041,075

Norman E. Lehrer, P.C.  
1205 North Kings Highway  
Cherry Hill, NJ 08034